

# Exhibit 24

LYNCH ICHIDA THOMPSON KIM & HIROTA

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WAYNE BERRY

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

SEP 20 2004

at 1 o'clock and 45 min. A.M.  
WALTER A.Y.H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,  
INC., a California corporation; H.E.S.  
TRANSPORTATION SERVICES,  
INC., a California corporation;  
CALIFORNIA PACIFIC  
CONSOLIDATORS, INC., a  
California corporation; JEFFREY P.  
GRAHAM and PETER SCHAUL,  
California citizens; MARK DILLON  
and TERESA NOA, BRIAN  
CHRISTENSEN, Hawaii citizens;  
FLEMING COMPANIES, INC., an  
Oklahoma corporation; C & S  
LOGISTICS OF HAWAII, LLC, a  
Delaware LLC; C & S WHOLESALE  
GROCERS, INC., a Vermont  
corporation;

) Civ. No. CV03 00385 SOM-LEK  
) (Copyright)

) AFFIDAVIT OF WAYNE BERRY;  
) EXHIBITS 1 through 34;  
) CERTIFICATE OF SERVICE

) CONTINUED  
) PRELIMINARY HEARING

) DATE: September 28, 2004  
) TIME: 9:00  
) JUDGE: Hon. Susan Oki Mollway

FILE-STAMPED COPY OF  
FIRST PAGE TO  
COMPLETE YOUR RECORD

C & S ACQUISITIONS, LLC;  
FOODLAND SUPER MARKET,  
LIMITED, a Hawaii corporation;  
HAWAII TRANSFER COMPANY,  
LIMITED, a Hawaii Corporation,  
RICHARD COHEN, a New Hampshire  
citizen ES3, LLC, a Delaware Limited  
Liability Company, MELVIN PONCE,  
SONIA PURDY, JUSTIN  
FUKUMOTO, AFREDDA  
WAIOLAMA, JACQUELINE RIO,  
Hawaii citizens; JESSIE GONZALES,  
LUIZ RODRIGUES, AL PEREZ and  
PATRICK HIRAYAMA, California  
citizens; GUIDANCE SOFTWARE,  
LLC, a California, LLC; MICHAEL  
GURZI, a California citizen; ALIX  
PARTNERS, LLC, a Delaware LLC ;  
DOE INDIVIDUALS 2-350; DOE  
PARTNERSHIPS, CORPORATIONS  
and OTHER DOE ENTITIES 2-20,  
  
Defendants.

AFFIDAVIT OF WAYNE BERRY

STATE OF HAWAII )  
 ) SS:  
CITY AND COUNTY OF HONOLULU )

WAYNE BERRY, being first duly sworn on oath, deposes and says:

1. Except where stated to be made on information and belief, this

fields from the Table "NoteCtn" named "FirstOfFlemingLocatons", "FirstOfLasDayToReturn", "FirstOfStatus" and "FirstOFStatusDate" fields into his spreadsheets. These four fields do not exist in FCS 1993 or in the version that the jury found to be infringing. These again are new modifications that Dillon made to my software made sometime after November of 2001 after I had sued Fleming for making unauthorized changes.

31. Attached at Exhibit 27 is a summary page of voluminous data that I created from by comparing my original FCS Logistics Data.MDB (the real original one) to the various Dillon creations. This Exhibit 27 shows 64 fields that did not exist in my original FCS Logistics Data.MDB. Seven of these modifications remained in Original Logistics Data.MDB and 57 of the modifications remained in Auxiliary Logistics Data.MDB. Dillon claims in his Affidavit filed on September 13, 2004 that this is my "original version" of FCS. My actual "original version" did not have these 64 modifications.

32. Dillon claims that the spreadsheets, elements of the Queries.MDB database, were populated by the Dillon Queries importing data from Original Logistics Data.MDB and Auxiliary Logistics Data.MDB were created and populated sometime in early June of 2003. He claims that he never accessed my software after July 8, 2004. As part of discovery in this case, Dillon produced

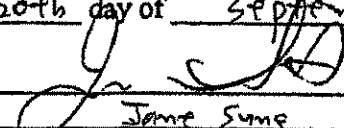
spreadsheets that now contain the logical relationships that I created in my original work. Some of these spreadsheets now run as linked tables in Dillon's Queries.MDB Access database.

47. Attached as Exhibit 34 is a list of the expressions contained in my original work FCS 1993 that, to the best of my knowledge, are not required by any external or industry requirement but merely the way I chose to express my idea of how to order or arrange the data in my programs. All of these field names were copied by Dillon in his Queries and, to the best of my knowledge, do not link to any source document or other external requirement. I never gave Dillon permission to copy these expressions from my FCS 1993.

Further Affiant sayeth naught.

  
WAYNE BERRY

Subscribed and sworn to before me this  
20th day of September, 2004

  
Notary Public, State of Hawaii

My commission expires: 3/18/2005

